

BOARD OF ADJUSTMENT FOR ZONING APPEALS
REVISED RULES OF PROCEDURE

These rules are adopted and issued by the Board of Adjustment for Zoning of the City and County of Denver in accordance with the Denver Zoning Code, Section 12.2.6.4.

ARTICLE I: OFFICERS

1. There shall be a Chair and a Vice-Chair elected by the Board each year at the first meeting following February 11, or at a meeting as close to that date as practicable.
2. The duties of the Chair, and in the absence of the Chair, the Vice-Chair, shall be to:
 - (a) Preside at meetings;
 - (b) Administer oaths to or accept affirmations from all persons who wish to testify;
 - (c) Decide all points of order, procedure and evidence unless overruled by a majority vote of the Board;
 - (d) Issue subpoenas to compel the attendance of witnesses at Board hearings, and in the event that a subpoena is not honored, request that a Cease and Desist Order based upon violation of the Denver Zoning Code (D.Z.C. or “Code”) be issued as set out in 12.2.6.6, D.Z.C.
3. In the absence of both the Chair and the Vice-Chair, the senior member of the Board shall preside unless he or she waives this right. In such a case, a Chair Pro Tem shall be elected by a majority of the members present.
4. Other officers may be designated for specific duties, such as personnel review, at the discretion of the Chair with the consent of the Board as a whole.
5. Board members shall follow the most currently adopted rules of Ethics in the City and County of Denver in determining self-recusal from proceedings.

ARTICLE II - MEETINGS

1. All meetings shall be open to the public except as provided in Article V, Paragraph 8, of these Rules and as set forth in Article III, Chapter 2, Denver Revised Municipal Code (DRMC).
2. Board meetings shall be scheduled beginning at 9:00 A.M. on each Tuesday unless it is a legal holiday. No hearings shall be scheduled between Christmas and New Year's Day, the week of July 4th, or at such other times as the Board may determine.
3. Special meetings may be called by a ruling of the Chair or by a majority vote of the Board.
4. Meetings before the Board shall be recorded by electronic means or, if deemed appropriate by the

majority of the Board, a Certified Court Reporter.

5. A quorum shall consist of three (3) members. Three members shall thus be sufficient to conduct the regular or administrative business of the Board, including the adoption of minutes and the rescheduling or dismissing of cases; and to hear and accept evidence in cases if no objection is raised by the parties.

6. If the Board sits with fewer than the five Board members set by the Code or needed for a decision in favor of the applicant, the applicant and other parties at the hearing shall be advised of his/her options under Article V, Paragraph 6.

7. Business meetings of the Board may be called by a ruling of the Chair or by a majority of the Board.

8. During a period of emergency declared by the Mayor or City officials, Board members may be provided alternative methods of participating in the meeting, including but not limited to, by telephone, electronically, or by other means of communication.

ARTICLE III - FILING APPLICATIONS WITH THE BOARD

1. All appeals or applications are to be filed in the Office of the Board within fifteen (15) days of the date of the action to be reviewed, unless an extension of this period is authorized by the staff of the agency issuing the action. If the issuing agency fails to extend the filing period, the staff of the Board shall accept the application with the provision that the Board will consider and decide any waiver of this rule at a special initial hearing in open session.

2. Any communication purporting to be an appeal or application shall be regarded as a mere notice of intention to seek relief until made of the prescribed Board form and the required filing fee has been paid.

3. Upon receipt of any appeal or application not in writing or not on the prescribed Board form, the party seeking relief shall be supplied with the prescribed form for the application by the Board's staff, either in hard copy or electronically. If necessary, the time for filing may be extended at the request of the Board's staff for any length of time authorized by the agency issuing the action, as set forth in Article III, Paragraph 1, above.

4. Every appeal or application made to the Board shall be in the name of the landowner(s) except as provided below at Article III, Paragraph 5, below.

5. An Appeal of an Administrative Decision may be filed by any person aggrieved or any officer or department of the City, as set out in Section 12.4.8.1, D.Z.C.

6. Each appeal or application made to the Board shall include a copy of the written action to be reviewed or appealed, and shall state the specific grounds upon which the relief is claimed.

7. A filing fee in accordance with Article VII of the Board's Rules shall be paid at the time of the

filing of the appeal.

8. Upon proper filing of an application, the Board's staff shall assign a case number, and set a date and time for a hearing.

ARTICLE IV - NOTIFICATION

1. Upon the filing of an application, the Board shall notify the appropriate division of Community Planning and Development in writing, as required by the applicable sections of the Denver Revised Municipal Code and the Denver Zoning Code.

2. The Board shall provide written notice of any case on a property to all landowners and/or to all parties filing the application, to the Councilperson for the district in which the property is located, and to all affected Registered Neighborhood Organizations as required by Section 12-96 of the Denver Revised Municipal Code.

3. The staff of the Board shall determine the number of required notification signs and prepare such signs in a manner that will give adequate notice of the purpose of the hearing, including the date, the time, the case number, and any other information deemed necessary.

4. Copies of the Board's agendas shall be transmitted to the Board and City staff, posted in the office of the Board, and made available in any manner or at any other location deemed necessary for proper public notice.

5. The applicant shall pick up the notification sign from the office of the Board prior to the hearing and post the sign on the property affected by the appeal, in a conspicuous location and according to the directions of the Board's staff. Any sign shall be on the outside of any affected building and continue to be posted for ten (10) consecutive days up to the day of the hearing, in a manner approved by the staff of the Board. Applicants are to be advised by the staff at the time of filing and again at the time of receipt of the Notification of Public Hearing sign that failure to post the sign may result in dismissal of the case.

6. When an appeal for Administrative Review is filed by an aggrieved party other than the owner or tenant of the premises, the applicant shall furnish the Board with accurate information so that the owner of the property can be given adequate notice of the appeal to insure the ability for timely response. A notification sign shall be posted by the applicant at or near the premises in the same manner as specified in Article IV, Paragraph 5, above, but is not to be posted on the landowner's private property.

7. Where any property before the Board is held in common ownership by the membership of a condominium association or other entity pursuant to the Colorado Condominium Act (Colorado Revised Statutes Section 38-33-101. *et. seq.*), the applicant shall furnish the Board with proof that the board of directors or homeowners' association of the condominium has authorized the application. Proof of this authorization may be provided by a Power of Attorney, a general resolution made at a membership

meeting, or any other document deemed adequate to show the required majority approval by the condominium ownership.

8. Notwithstanding the provisions of Paragraph 7, above, if any appeal before the Board pertains only to a single condominium unit or less than all of the units, and does not pertain to property owned in common by the members of the condominium association, then such an application may be made in the names of the owners of said condominium units, and does not require the approval of all condominium owners in the association. A Power of Attorney from the condominium board of directors or homeowners' association shall be deemed adequate to show the required notice and approval of the condominium ownership.

9. Where any property before the Board is a Planned Building Group (P. B. G.), a Power of Attorney from the other owners of record shall be required unless, as when there is a P. B. G. with multiple units and more than 10 owners of record, it is impractical to acquire such Powers of Attorney. However, all P. B. G. owners of record known to the Board through its normal processing of a case shall be notified of the pending case to allow them to participate and/or comment. Failure to participate by P. B. G. owners other than the applicant may be deemed approval by the Board in reviewing evidence.

ARTICLE V - THE HEARING

1. All evidence and testimony shall be presented publicly, and all witnesses shall testify under oath. The Board may take judicial notice of the facts to the same extent and in the same manner as courts of record and may consider any relevant facts within the personal knowledge of any member of the Board which are stated into the record by such member. No evidence except items specifically required by the Board or offered for a reconsideration or modification as described in Article VI shall be accepted after a hearing is closed.

2. All landowners and applicants shall appear in person at the hearing, or by a properly authorized representative or agent. An authorized agent who is thoroughly familiar with all aspects of the appeal and who is able to testify as to all issues may appear if he or she holds a properly signed and executed document showing that he has authority to proceed on behalf of the landowner or applicant. Documents that are acceptable to show authority to proceed shall include:

- (a) Individual Powers of Attorney, when the property affected in any hearing before the Board is held in single ownership, or by two or more individuals who designate the same agent;
- (b) Co-Owner Powers of Attorney, when one of the owners represents all non-appearing owners;
- (c) Corporate Powers of Attorney, when the property affected is held in ownership by a Corporation, Company, Association, Partnership, or Church, signed by an officer,

managing partner or other authorized representative;

- (d) Condominium Powers of Attorney, when property is held in condominium ownership and the common elements are affected. The applicant shall present a Power of Attorney properly signed and acknowledged by a principal officer of the condominium association. This Power of Attorney shall state that a meeting of the association was held, whether it was for the members or directors, whether it was a special or a regular meeting, the number of persons present, the record of any vote taken, and that notice was given to the owners in accordance with Article IV, Paragraph 7, above. Where the appeal does not concern the common elements, a letter of approval from the Condominium Association as described above at Article IV, Paragraph 8, above, will be deemed sufficient;
- (e) Any notarized document that is deemed by both the Board and the City's legal staff to show that the agent has the approval of the relevant landowner or party.

3. All Powers of Attorney or similar documents that are not given to the Board at or before the hearing, and entered as an exhibit, must be submitted to the office of the Board within thirty (30) days after the hearing. Failure to submit the Power of Attorney at the hearing will result in the decision being withheld. Failure to submit the Power of Attorney within 30 days of the hearing will result in revocation of any relief, unless an extension of this time period is granted.

4. At any public hearing before the Board, a representative of any concerned City agency and any other interested party may appear in person, by agent or by attorney, and may intervene, offer evidence and testimony, and question witnesses as deemed appropriate by the Board.

5. Cases on the Supplemental Agenda will be heard before the Board in a session open to the public. However, unless deemed appropriate by the Board, such hearings will consist solely of the review of documents with advice by the Board's staff, and will not include the presentation of evidence and testimony by City staff, appellants, or other concerned parties.

6. Because four concurring votes are required under Section 12.2.6.9.A. DZC in order to overturn a decision of the Zoning Administrator or grant the requested relief, the Chair shall advise the applicant and other parties at the hearing if less than five (5) members of the Board are present:

- (a) That four affirmative votes are necessary to grant relief,
- (b) That the applicant, objector/intervenor, Zoning Administration, or the Board may request a continuance for the case to be heard by a full five-member Board, but that such a continuance is not mandatory for the Board;
- (c) That if at least three (3) members are present, the hearing may proceed, and if the vote of an absent member is required to obtain four (4) concurring votes, the decision may be

delayed to allow the absent member(s) to listen to the recording of the hearing, review the exhibits, and participate in the deliberations and decision on the case, and

(d) That the member to review the record will be designated by the Chair.

7. All Actions of the Board or decisions of the Board shall be made upon motion of one of the members in open session. If any member of the Board desires to abstain from participating in a particular case, he/she shall announce that fact on the record, stating the reason for such abstention.

8. The Board may by a two-thirds vote call an executive session for the purpose of deliberations in a case, in order to evaluate evidence, including the credibility of witnesses, in accordance with Article III, Chapter 2, Denver Revised Municipal Code. However, the motion, vote of each member, and decision in the case shall be made on the record and at a session open to the public, and shall be reflected in the Board's Findings of Fact and Conclusions as to Law (Findings). No testimony or exhibits shall be received in executive session.

9. For purposes of determining the date from which any appeal period runs, the date of the final decision is the date on which this final decision was made, even if different from the hearing date(s) at which testimony and evidence were accepted. The date on which the final decision was made is also the date on which it is deemed to be filed in the Office of the Board.

10. The Board shall keep minutes of its proceedings which include the individual Findings for each case on the Regular or Supplemental Agenda. In addition to information about the address, subject, parties and appearances for each hearing, individual case Findings shall show the motion(s) made, the vote of each member on every case, or if absent or abstaining; and the Action of the Board. All records reviewed by the Board and all Findings for a particular case shall be public record and be filed in the Office of the Board within 21 days of the final decision as required by Section 12.2.6.9.B.2. DZC.

11. During a period of emergency declared by the Mayor or City officials, landowners, applicants, and interested members of the public may be provided alternative methods of participating in the meeting including but not limited to, by telephone, electronically, or by other means of communication.

ARTICLE VI - RECONSIDERATION OR MODIFICATION OF A DECISION

1. No case heard by the Board can be considered again except upon a Request for Reconsideration filed with the Board within twenty (20) days of the final decision upon the proper form supplied by the Board's staff which will set forth:

- (a) That new evidence has been discovered which could not have been presented at the original hearing;
- (b) The reasons the evidence could not have been presented at the time of the hearing; and
- (c) The new evidence or an offer of proof of new testimony.

The filing of a Request for Reconsideration does not stay or extend the time to file an appeal from a Board decision.

2. Upon receipt of a Request for Reconsideration conforming to Paragraph 1, above, the Board may, upon a motion by a member who voted on the side of the prevailing outcome of the original decision, and by four (4) affirmative votes, grant a rehearing.

3. Any Reconsideration found to require a re-hearing of the case shall be subject to a 50% reinstatement fee under Article VII, and shall retain the case number originally assigned to it. All parties appearing at the previous hearing(s) shall be notified in writing of the new hearing, and the notices required in Article IV shall be repeated.

4. The Board may, upon the written request of an applicant or other concerned party, review any Variance previously granted and may modify it in whole or in part, upon a representation that such a Modification will be minor and in keeping with the original decision. However, no such review will be considered if made more than five (5) years after the date of the final decision, as set forth at Article V, Paragraph 9, above.

5. Upon receipt of a request for Modification conforming to Paragraph 4, above, the Board may, upon a motion receiving four (4) affirmative votes, modify the original decision. However, no such review shall prejudice the rights of any person who has in good faith acted upon such a decision before it was modified. If the request for Modification is denied, the applicant may apply for a case before the Board without prejudice, in the manner set out in Article III.

6. A case dismissed without a hearing for nonappearance may be reinstated by the Board upon submission of a written request by the applicant within thirty (30) days of the decision to dismiss. This request must state the reasons for the nonappearance in detail. If this reason is deemed adequate to explain the nonappearance, the Board, upon a motion receiving four (4) affirmative votes, may reinstate the case in the same manner as set out in Article VI. Para. 3, above.

7. Any case remanded to the Board by a higher court after an appeal under C.R.C.P. 106 (a)(4) shall require no additional filing fee, and shall be designated by its original case number with the letter R added (e.g., 12-12 R)

ARTICLE VII - FEES

1. Filing fees for each application have been determined by the Board and approved by City Council under 12.3.3.4.B. of the Denver Zoning Code, as follows:

A. Filing Fees by Categories

1. \$100.00: For the following a one hundred dollar fee shall be charged.

a. Enclosures of balconies of individual units of multiple unit dwellings;

- b. Zoning Permits with Informational Notice (for keeping of animals only);
 - c. Six Month Delay of Enforcement under Section 12.2.6.7. from cease and desist orders from Neighborhood Inspection Services for violations not eligible for Variance or Special Exception, including inoperable, dismantled or other non-permitted vehicles, trash or junk on the property, unpaved or unscreened parking, and unrelated persons.
2. \$150.00: For the following a one hundred fifty dollar fee shall be charged.
- a. Variances for minor construction including fences and detached sheds;
 - b. Variances for excess number of vehicles, oversized vehicles such as overlength recreational vehicles, and the location of detached campers, trailers and boats;
 - c. Variances for signage (excluding off-premises signs);
 - d. Six Month Delay of Enforcement under Section 12.2.6.7. for cease and desist orders from Neighborhood Inspection Services for violations filed under Categories 2.a. through 2.c.
 - e. Zoning Permits with Informational Notice (excluding keeping of animals);
3. \$200.00: For the following a fee of two hundred dollars shall be charged.
- a. Variances for major construction including residential, commercial and industrial buildings, additions to these structures, second use by right structures, tandem houses or ADUs, and garages;
 - b. Variances from provisions or conditions of approved landscaping plans (excluding the requirement to provide landscaping);
 - c. Six Month Delay of Enforcement under Section 12.2.6.7. from cease and desist orders from Neighborhood Inspection Services for violations filed under Categories 3.a. and 3.b;
 - d. Stay of Effective Date of Orders from cease and desist orders from Neighborhood Inspection Services for the operation of excess dwelling units, including second use by right structures.
4. \$300.00: For the following a fee of three hundred dollars shall be charged.
- a. Zoning Permits with Special Exception Review (use categories as determined by Zoning Code and Community Planning);
 - b. Variances for violations created by zone lot amendments;
 - c. Six Month Delay of Enforcement under Section 12.2.6.7. from cease and desist orders from Neighborhood Inspection Services for violations filed under Categories 4.a. and 4.b;

d. Any other appeal not specifically included in Categories 1 through 5.

5. \$400.00:

- a. Appeal of Administrative Decision under Zoning Code by Manager or staff of Community Planning, including all third party appeals of such decisions;
- b. Six Month Delay of Enforcement under Section 12.2.6.7. from cease and desist orders from Neighborhood Inspection Services for violations filed under Category 4.a.

- B. Penalty Fee: A fifty dollar (\$50.00) fee will be assessed on appeals from orders when the applicant has taken action or done construction prior to obtaining the required zoning permit.
- C. Determining Filing Fees: When more than one of the above fee categories applies to one case, only the larger shall be charged.
- D. Reinstatement Fee: For each rehearing or reinstatement granted by the Board, a fee equal to one-half of the original filing fee will be required.
- E. Reposting Penalty: A fifty dollar (\$50.00) fee will be assessed against an applicant whose actions in failing to post the property notification sign or to post it correctly results in rescheduling of the case.

2. Filing fees shall be paid in full at the time of filing. The staff of the Board may not waive filing fees or refund them without an action of the Board.

3. Any refund must be granted by the Board on the record in an open hearing with a majority vote of at least three members, with the following conditions:

- (a) A 50% refund shall be given when a case is withdrawn in writing at least 30 days before its first scheduled hearing. Continued or rescheduled cases are not eligible for such a refund even if withdrawn in writing at least 30 days before the new hearing date.
- (b) A 100% refund shall be given when the order or denial on which an appeal is filed is rescinded by Neighborhood Inspection Services or Community Planning staff due to an error in its issuance. Withdrawal by these agencies of a valid order or denial due to subsequent compliance by the applicant is not grounds for a 100% refund.
- (c) A refund of any amount deemed appropriate by the Board may be given upon a finding of hardship caused by exceptional circumstances, which may include age, physical disability or limited income which is severely affected by the payment of the fee required. Applicants may request such a refund from the Board at the time of the hearing. Any applicant requesting such

a refund must present evidence of the hardship, such as proof of monthly income. The determination of hardship shall be at the discretion of the Board, and on a case by case basis.

(d) No refund will be given solely for prevailing in a case before the Board.

4. The staff, with the approval of the Board, shall establish a fee schedule for recordings of hearings, photocopies, certified records for cases appealed to the District Court, and other such items provided by the staff in addition to any copies or items provided free as a normal part of the filing and hearing process.

ARTICLE VIII - AMENDMENT OR SUSPENSION OF RULES

1. The suspension of any of the Rules of Procedure may be ordered at any meeting by a unanimous vote of the members present if such suspension is not contrary to the letter or spirit of provisions of the Denver Revised Municipal Code or the Denver Zoning Code.

2. Amendments to these Rules of Procedure may be made by the Board at any regular meeting upon the affirmative vote of three members and upon compliance with Section 2-93 of the Denver Revised Municipal Code.

ARTICLE IX - PARLIAMENTARY AUTHORITY

1. The parliamentary rules contained in Robert's Rules of Order, latest revision, shall govern in all cases to which they are applicable, except as modified by these Rules of Procedure.

2. To any extent not included herein, these Rules of Procedure incorporate the provisions of Article 12 of the Denver Zoning Code.

LEGISLATIVE HISTORY OF BOARD'S RULES OF PROCEDURE

Restated Rules of Procedure adopted and passed by the Board in accordance with Section 59-53 Revised Municipal Code on August 25, 1987.

Notice published in the Daily Journal in accordance with Section 2-93 Revised Municipal Code.

Frana L. Mace
CHAIR

Restated Rules of Procedure submitted for readoption and passed by the Board in accordance with Section 59-53 Revised Municipal Code and The Most Recently Revised Procedures for Adoption of Denver Rules and Regulations: Ordinance No. 557, adopted effective July 23, 1993.

Susan E. Aukema
CHAIR

Revised Rules of Procedure adopted by the Board as required by and in accordance with the Denver Zoning Code Article 12.2.6.4. on November 18, 2012.

Penny Elder
CHAIR